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(5)

CANCE

SINGLE BENCH

IN THE HON'BLE HIGH COURT OF CHHATTISGARH

AT BILASPUR

W.P. (C) 148 /2007S.B.

PETITION UNDER ARTICLE 227 CONSTITUTION OF INDIA

PETITIONER: Rath Ram Kesharwani S\o Madav Prasad Kesharwani, aged about 50 years Cultivator, R\o Sukulpara, Tahasil Pamgarh, District Janjgir- Champa (C.G.)

Defendant\ Judgement- Debtor

VERSUS

RESPONDENTS :

1. Bilaspur- Raipur Chetriya Gramin Bank, Branch : Rahaud, Distt. Janjgir- Champa (C.G.) Through Advocate Shri Rajesh Verma, Advocate, District Court, Bilaspur (C.G.)

Plaintiff\ Decree- Holder

2. Ramesh Kesharwani S\o Madav Prasad Kesharwani, Aged about 40 years , Cultivator, R\o Sukulpara, Kharaud, Tahasil Pamgarh, District Janjgir- Champa (C.G.)

3. Mahesh Keasharwani S\o S\o Madav Prasad Kesharwani, (Died on 1\12\2006, L.Rs. not brought on record by D.H. in Execution case)

4. Bal Ram Noniya S\o Late Shri Hari Shankar Noniya , R\o Sukulpara, Kharaud, Tahasil Pamgarh, District Janjgir- Champa (C.G.)

P.R. No. 587/07
Presented by Shri Yashwant Tiwari
dated 17/01/07

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Through Advocate Shri Harsha Banafer,

Advocate, District Court, Bilaspur (C.G.)

5. Paras Ram S\o Shobha Ram Kesharwani R\o Sukulpara, Kharaud, Tahasil Pamgarh, District Janjgir- Champa (C.G.)

Through Advocate Shri Harsha Banafer

Advocate, District Court, Bilaspur (C.G.)

6. Gorelal S\o Tirath Dewangan, Retd. Professor Hal Mukam Through Govt. Science College, Durg (C.G.)

Through Advocate Shri Harsha Banafer,

Advocate, District Court, Bilaspur (C.G.)

7. Bhure Lal Dewangan S\o Tirath Ram Dewangan R\o Sukulpara, Kharaud, Tahasil Pamgarh, District Janjgir- Champa (C.G.)

Through Advocate Shri Harsha Banafer,

Advocate, District Court, Bilaspur (C.G.)

8. Ram Krishna Dewangan S\o Tirath Ram Dewangan, Teacher, Lala Lajpat Rai School, Khaparganj, Bilaspur (C.G.)

Through Advocate Shri Harsha Banafer,

Advocate, District Court, Bilaspur (C.G.)

Defendants\ Judgment- Debtors

PETITION UNDER ARTICLE 227 CONSTITUTION OF INDIA

The Petitioner above named respectfully submits as under

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XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P.(C).149..... **सन् 2007**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	5.2.2007 Shri Yashwant Tiwari, learned counsel for the petitioner. This petition has been preferred by a judgment debtor against whom and four others a joint decree for a sum of Rs. 1,37,444/- has been passed on 7th August 1998 in Civil Suit No. 9-B/97 by 6th Additional District Judge, Bilaspur. The petitioner is aggrieved by the order dated 6.12.2006 passed in execution proceedings against the above persons whereby the application under Order 21 Rule 43 read with Section 151 of the C.P.C. for attachment of the joint family property for recovery of the decretal amount, was rejected and steps for committing the petitioner to civil imprisonment were initiated. Learned counsel for the petitioner submits that the execution proceeding is without jurisdiction as it has been initiated by the 1st Additional District Judge, Bilaspur though the decree has been passed by the 6th Additional District Judge, Bilaspur and the same has not been made over to the executing Court. The further objection of the petitioner is that prior to initiating proceedings for committing the petitioner to civil imprisonment, his movable property was ordered to be attached, however, without opting for attachment of the movable property of the petitioner, the	

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P.(C).148..... **सन्** 2007

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Court below directed proceedings under Order 21 Rule 37 of the C.P.C. without there being any valid reason.

I have heard learned counsel for the petitioner.

So far as the first objection of the petitioner regarding jurisdiction of the executing Court is concerned, the petitioner had participated in the execution proceedings without any objection, therefore, at this stage he cannot be permitted to raise this objection for the first time.

The next question is whether the Court below has committed any illegality in initiating proceedings under Order 21 Rule 37 of the C.P.C. for committing the petitioner to civil imprisonment.

From perusal of the order sheets annexed with the petition, I find that on 6.9.2006 reply to application under Order 21 Rule 37 read with Section 55 of the C.P.C. was filed and on that date it was submitted by counsel for the petitioner that he may be given time to argue on the above application. In reply, it was also stated that the judgment debtor No. 1 is prepared to deposit his share of the decretal amount in the Court and in the aforesaid circumstances, it was directed that only after the amount is

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मामला क्रमांक W.P.(C).148.... **सन्** 2007

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	deposited, application under Order 21 Rule 37 of the C.P.C. will be decided. Subsequent to that it appears that the petitioner offered attachment of the land jointly recorded in the name of several persons which was refused by the executing Court on the ground that the property proposed for attachment is a disputed property and the same cannot be attached. Considering the various orders passed by the executing Court and further considering the conduct of the petitioner, this Court is of the opinion that there is no illegality in the impugned order occasioning grave injustice or failure of justice to the parties, which calls for interference by this Court in the exercise of jurisdiction vested under Article 227 of the Constitution of India. The petition is liable to be dismissed at the admission stage itself and is hereby dismissed. **Sd/-** **Dhirendra Mishra** **Judge**	

P.T.O.

13-2-07